

NORTH CAROLINA COURT OF APPEALS

JEFFERSON GRIFFIN,)
)
 Petitioner-Appellant,)
)
 v.)
)
 NORTH CAROLINA STATE BOARD OF)
 ELECTIONS,)
)
 Respondent-Appellee,)
)
 and)
)
 ALLISON RIGGS,)
)
 Intervenor-Respondent-Appellee.)
)

From Wake County

Nos. 24CV040619-910
24CV040620-910
24CV050622-910

**MOTION FOR INITIAL EN BANC CONSIDERATION AND
 FOR EXPEDITED DECISION ON WHETHER TO SIT EN BANC**

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Intervenor-Respondent-Appellee Allison Riggs moves under North Carolina Rule of Appellate Procedure 31.1(c) for initial en banc consideration. Justice Riggs also moves under North Carolina Rule of Appellate Procedure 2 for a briefing schedule and decision consistent with the expedited treatment of this appeal. In support of this motion, Justice Riggs shows:

1. On 13 December 2024, Respondent-Appellee North Carolina State Board of Elections dismissed the election protests at issue in this appeal. In those

election protests, Petitioner-Appellant Jefferson Griffin challenged over 60,000 votes cast in the November 2024 general election. (R p 10.)

2. On 18 December 2024, Judge Griffin filed in our Supreme Court a petition for writ of prohibition and motion for temporary stay. *See Griffin v. N.C. State Bd. of Elections*, No. 320P24, 2025 N.C. LEXIS 50, at *1 (Jan. 22, 2025).

3. Two days later, Judge Griffin “sought judicial review in the Superior Court of Wake County pursuant to N.C.G.S. § 163-182.14(b) on the same grounds as those set out in his petition.” *Id.* at *2.

4. On 22 January 2025, the Supreme Court “dismiss[e]d the petition for writ of prohibition so that the Superior Court of Wake County may proceed with the appeals that petitioner filed.” *Id.* at *3. The Supreme Court ordered that a stay of certification “shall remain in place until the Superior Court of Wake County has ruled on petitioner’s appeals and any appeals from its rulings have been exhausted,” and it directed the Superior Court “to proceed expeditiously.” *Id.*

5. On 7 February 2025, the Superior Court affirmed the State Board’s dismissal of Judge Griffin’s protests. The Superior Court “conclude[d] as a matter of law that the Board’s decision was not in violation of constitutional provisions, was not in excess of statutory authority or jurisdiction of the agency, was made upon lawful procedure, and was not affected by other error of law.” (R pp 152, 210, 269.)

6. On 10 February 2025, Judge Griffin filed notices of appeal to this Court. (*See* R pp 154, 212, 271.) Three days later, this Court consolidated these

appeals and set an expedited briefing schedule under which Judge Griffin’s opening brief was due on 24 February 2025, Justice Riggs’s and the State Board’s briefs are due on 27 February 2025, and any reply brief is due on 3 March 2025. Once that reply is filed, the “case will be calendared for hearing expeditiously.” (13 Feb. 2025 Order ¶ 12.)

7. On 17 February 2024, the State Board filed in the Supreme Court a Petition for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules, and Motion to Expedite.

8. Judge Griffin opposed the Board’s Petition. He argued that, because Justice Riggs is recused, discretionary review “risks adjudicating these disputes as a six-member panel—a structure vulnerable to deadlock.” (Opp’n Pet. Discretionary Review at 2, *Griffin v. N.C. State Bd. of Elections*, No. 320P24-2 (N.C. Feb. 19, 2025).) Given this potential for deadlock in the Supreme Court, Judge Griffin emphasized the need for this Court to provide “reasoned analysis of Judge Griffin’s election protests.” (*Id.*)

9. On 20 February 2024, the Supreme Court denied the State Board’s Petition. The Court did not explain its reasoning, but Justices Barringer and Allen wrote separately to express their views that the Supreme “Court and our State will benefit from a well-reasoned, thoughtful, and deliberative analysis by the Court of Appeals.” *Griffin v. N.C. State Bd. of Elections*, No. 320P24-2, 2025 N.C. LEXIS 100, at *2 (Feb. 20, 2025) (Barringer, J., concurring); *accord id.* at *4 (Allen, J., concurring).

10. On 24 February 2025, Judge Griffin filed his opening brief in this Court. Once this opening brief was filed, “any party may file a motion for en banc consideration.” N.C. R. App. P. 31.1(c); *see also* N.C. Gen. Stat. § 7A-16 (“The Court of Appeals shall sit in panels of three judges each and may also sit en banc to hear or rehear any cause upon a vote of the majority of the judges of the court.”).

I. The Court Should Grant Initial En Banc Hearing

11. Justice Riggs moves the Court to hear this case en banc. While en banc hearing “is not favored,” it is appropriate when “the case involves a question of exceptional importance that must be concisely stated.” N.C. R. App. P. 31.1(a). This appeal meets that standard, and it merits initial en banc consideration for three reasons.

12. First, the issues presented are important. As Chief Justice Newby put it in related proceedings, this case “is about preserving the public’s trust and confidence in our elections through the rule of law.” *Griffin v. N.C. State Bd. of Elections*, No. 320P24, 2025 N.C. LEXIS 50, at *4 (Jan. 22, 2025) (Newby, C.J., concurring). “Given the significance of this case and the complexity of the issues raised,” the public’s trust and confidence are best preserved by a “thorough evaluation of the parties’ arguments.” *Griffin v. N.C. State Bd. of Elections*, No. 320P24-2, 2025 N.C. LEXIS 100, at *2 (Feb. 20, 2025) (Allen, J., concurring). The full Court is best positioned to provide that thorough analysis.

13. Second, initial hearing en banc is consistent with the Supreme Court’s instruction “to proceed expeditiously.” *Griffin v. N.C. State Bd. of Elections*, No. 320P24, 2025 N.C. LEXIS 50, at *3 (Jan. 22, 2025). If this appeal is decided by a

panel of this Court, the disappointed party or parties will have the right to seek rehearing en banc. Any such request will cause further delay even if the full Court denies that request. See N.C. R. App. P. 31.1(d) (“The denial of the motion will trigger the time . . . for filing a petition for discretionary review pursuant to Rule 15.”). By agreeing to hear this appeal en banc now, the Court will protect the parties’ rights while providing the expedited review that the Supreme Court ordered.

14. Third, as Judge Griffin highlighted, the prospect of deadlock in the Supreme Court means that this Court’s opinion could stand as the final adjudication of the important state-law issues presented here.¹ This potential for deadlock reinforces the importance of thorough review and a concise articulation of state law by the full Court, rather than from a three-judge panel. And because no party knows how this Court will resolve those state-law issues, this request for initial en banc consideration does not risk the type of “outcome-determined reasoning” that “has no place in a court committed to the rule of law.” *Griffin v. N.C. State Bd. of Elections*, No. 320P24-2, 2025 N.C. LEXIS 100, at *5 (Feb. 20, 2025) (Earls, J., dissenting).

II. The Court Should Expedite Consideration of Whether to Sit En Banc

15. Justice Riggs also moves this Court for a briefing schedule and decision consistent with the expedited treatment of this appeal.

¹ The Fourth Circuit instructed the Eastern District of North Carolina to “retain jurisdiction of the federal issues” in this case “should those issues remain after the resolution of the state court proceedings, including any appeals.” (*E.g.*, R p 145.) Justice Riggs has reserved her right to return to federal court for consideration of her federal arguments. (*See* R pp 146, 204, 263.)

16. Under the standard rules, the parties have “ten days after service of the motion” to file any response and the Court “will rule upon the motion within thirty days after the case is fully briefed and may rule upon it prior to that time.” *See* N.C. R. App. P. 31.1(c). This timeline is in tension with the briefing schedule established by this Court, under which Judge Griffin filed his opening brief yesterday (on 24 February 2025), briefing will be complete by 3 March 2025, and the case will be calendared for hearing expeditiously thereafter. Justice Riggs accordingly respectfully requests expedited treatment and that the Court decide the motion as soon as practicable.

17. Justice Riggs informed Judge Griffin and the State Board of the intended filing of this motion. The State Board does not object to initial hearing en banc. Judge Griffin opposes the motion and requested that it include the following statement:

Judge Griffin opposes the motion for initial en banc review and the request to expedite resolution of the motion. Judge Griffin will be operating under an extremely quick deadline for his merits reply briefs. Unless the Court summarily denies the motion, Judge Griffin requests that his response to the en banc motion be due no earlier than March 5.

Justice Riggs notes that merits response briefs are due on 27 February 2025. An order directing Judge Griffin to respond to this motion by 27 February would thus not affect briefing on the merits reply.

WHEREFORE, Justice Riggs moves for initial en banc hearing and for expedited consideration of that request.

Respectfully submitted, this 25th day of February, 2025.

WOMBLE BOND DICKINSON (US) LLP

Electronically Submitted

Raymond M. Bennett
N.C. State Bar No. 36341
555 Fayetteville Street, Suite 1100
Raleigh, NC 27601
(919) 755-2100
ray.bennett@wbd-us.com

N.C. R. App. P. 33(b) Certification: I certify that the attorney listed below has authorized me to list his name on this document as if he personally signed it.

Samuel B. Hartzell
N.C. State Bar No. 49256
sam.hartzell@wbd-us.com

*Attorneys for Intervenor-Respondent-Appellee
Allison Riggs*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 25 February 2025 a copy of the foregoing document was electronically filed and served by email, addressed as follows:

Troy Shelton - tshelton@dowlingfirm.com
Craig D. Schauer - cschauer@dowlingfirm.com
W. Michael Dowling - mike@dowlingfirm.com
Philip R. Thomas - pthomas@chalmersadams.com

Attorneys for Petitioner-Appellant Jefferson Griffin

Mary Carla Babb - mcbabb@ncdoj.gov
Terence Steed - tsteed@ncdoj.gov

Attorneys for Respondent-Appellee North Carolina State Board of Elections

/s/ Raymond M. Bennett
Raymond M. Bennett